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Mr. Corbin Davis,

The Supreme Court is proposing that the trial courts implement a privacy policy consistent with 2004 PA 454 although the legislature appears to have exempted trial courts from the Act's requirements. While the Judicial Conference has no objection to requiring trial courts to develop privacy policies, the Judicial Conference believes that a strict application of 2004 PA 454 may lead to insurmountable administrative burdens that will impair the ability of trial courts to carry out their main mission. The Judicial Conference respectfully suggest that the Supreme Court tailor the principles of the Privacy Act to the work of the trial courts.

The proposed policy can be read to require that social security numbers be redacted from trial court files to protect the number from being copied. This seemingly minor proposal would require a substantial diversion of resources from existing demands on the trial courts. Each time a request is made to access a file, the clerk would need to inspect the file for the presence of a social security number so that it could not be copied. Multiplying this task by the many times files are produced every day in every trial court in this state would create unprecedented demands on staff that would prevent them from carrying out their primary duty. As to those files on microfilm, is it even technically possible to redact social security numbers? Additionally, those courts that have court records available online may have even greater difficulty redacting from electronic images. The Judicial Conference would urge that redacting requirements be deleted. The better approach is to continue to modify SCAO forms so as not to demand social security numbers and to authorize, not require, trial courts to redact social security numbers from existing files. Over time this process will obtain the same benefit without disruption of service to the public.

At the same time, the Supreme Court needs to be careful in requiring the filing of documents which are likely to contain sensitive financial data. For example, the Supreme Court is presently considering ADM 2004-54 which may require the filing of death certificates, verifications of deposit and financial statements, all of which contain sensitive information, including social security numbers. Additionally, the privacy policy could not apply to deceased persons since 2004 PA 454, by its express terms, does not apply to deceased persons.

Further, the Judicial Conference feels, as it did in its comments to ADM 2004-42, that a punitive approach to addressing breaches of the privacy policy is misplaced. Rather than focus on punishment, the Judicial Conference would urge the Supreme Court to focus on process improvement. The Judicial Conference recommends that paragraph B (4) be deleted.

Finally, the reference to MCR 2.612(A)(1) seems misplaced. The rule refers to motions, not requests, and deals with "clerical mistakes". The better approach would be a new rule to cover requests for redaction or modify MCR 8.119(F).

Thank you for your time and consideration in reviewing our comments.

Sincerely,  
Hon. Peter J. Maceroni, Chair  
Michigan Judicial Committee